IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8030 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

SHAMALSINH NAVALSINH PARMAR

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Appearance:

1. Special Civil Application No. 8030 of 1999

MR HS MUNSHAW for Petitioner No. 1

MR BA VAISHNAV for Respondent No. 1

MR MK PATEL for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/04/2002

ORAL JUDGEMENT

Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner Corporation and Mr.Biren Vaishnav, learned advocate for respondent workman.

The petitioner Corporation has challenged the award passed by the Labour Court, Himatnagar in Reference No.525 / 1996 dated 28th January, 1999, wherein the labour court has granted reinstatement with continuity of service with full backwages of the interim period. This Court has vide order dated 22nd March, 2000 issued RULE and granted ad-interim relief in terms of Para-8[C] qua backwages only, however, in the meanwhile, the petitioner Corporation is directed to reinstate the respondent workman within a period of two weeks from the date of order and also directed to full wages from the date of Award dated 28th January, 1999 till the date of his actual reinstatement in service. Notice as to interim relief was issued returnable on 19th April, 2000. Learned advocate Mr.Vaishnav has submitted that in pursuance of the order passed by this Court, the respondent workman has been reinstated in service by the petitioner Corporation.

Learned advocate Mr.Munshaw for petitioner Corporation has submitted that the respondent workman was working as Off Day Reliever Watchman and he has not completed 240 days continuous service with the Corporation within period of twelve months from the date of termination. It is further submitted that the workman was not selected employee by recruitment procedure but he was engaged just to meet the exigency with permanent employee remains on leave. Therefore, he was not entitled to any relief which h as been granted by the labour Court. Learned advocate Mr.Munshaw has also submitted that the petitioner Corporation has produced certain documents before the labour court but the same was ignored by the labour court while passing the award under challenge and therefore, the award passed by the labour court granting benefits in favour of the respondent workman is required to be set aside. It is further submitted that the respondent workman was selected at Sr.No.22 for the post of Watchman by regular selection but he remained on selection list for a period of two years and before expiry of two years period, the respondent workman was not appointed and therefore said period for selection list had expired and therefore also the workman has no legal right to be taken as permanent employee of the corporation. Therefore, the award passed by the labour court ignoring this fact, requires to be quashed and set aside by this Court.

Learned advocate Mr.Biren Vaishnav for respondent workman has submitted that before the labour court, the respondent workman was examined vide Exh.10 and the respondent workman has produced pay slip vide Exh.9 and

proved the fact that he completed 240 days continuous service . It is also contention of the respondent workman that the workman was working with the petitioner Corporation continuously for a period of three years and no oral evidence has been led by the petitioner Corporation to rebut the evidence of the respondent workman and therefore, the labour court has rightly passed the award especially when there was no rebuttal evidence. The labour court has not committed any error while granting the relief of reinstatement with continuity of service and full backwages for interim period.

I have considered submissions made by learned advocates for the parties and also perused the award passed by the labour court. Before the labour court, the respondent workman has filed statement of claim vide Exh.5 pointing out that the respondent work man was working as Off Day Reliever Watchman since many years and therefore, provisions of I.D.Act would be applicable to the petitioner Corporation. That the respondent workman was called for interview for the post of Watchman by the corporation and he was selected but he was not appointed on permanent post, whereas other persons have been appointed as Watchman on the permanent post and therefore, termination order dated 19th August, 1993 has been passed by the Corporation, is illegal and bad. It is also pointed out that since two years, he had continuously worked even though said period has been ignored and ultimately his services illegally came to be terminated. As against these contentions, the petitioner Corporation has filed written statement vide Exh.8 denying the allegations made by the respondent workman. In the written statement, the petitioner Corporation has pointed out that on pg.27 that the respondent workman was selected on 20th April, 1996 on the post of Watchman and he was at Sr.No.22 and appointments were given upto Sr.No.18 and during of the said selection list for period of two years which expired and therefore, the respondent workman was not entitled to appointment on the post of Watchman as permanent employee of the petitioner Corporation. The petitioner Corporation has also pointed out in the written statement that the respondent workman has completed 78 days in the year 1991, 175 days in the year 1992 and 136 days in the year 1993 but the duration of the select list was over on 9th April, 1993 and therefore, Reference which has been filed by the respondent workman requires to be rejected. The respondent workman has produced documents vide Exh.9 and also produced pay slip for the months from March to August, 1993 at Exh.11. Documents at Exh.11 to 16

produced by the respondent workman showing Dearness Allowance paid by the petitioner Corporation. It is also pertinent to note two aspects that the petitioner Corporation has not produced any documentary evidence before the labour court and secondly, has not led any oral evidence before the labour court. This aspect has been observed by the labour court at pg.29. The labour court has observed that inspite of various opportunities given to the petitioner Corporation, no documentary or oral evidence led by the petitioner Corporation and therefore, vide Exh.29 the right of leading oral evidence of the petitioner corporation has been closed. Thereafter, written arguments submitted by both the parties and accordingly, the merits of the matter examined by the labour court. According to the oral evidence led by the respondent workman, he had worked with the petitioner Corporation for about three years as Off Day Reliever Watchman. Initially, he was appointed in Mansa Division of Himmatnagar and before terminating services of the respondent workman, Section 25-F of the I.D.Act has not been complied with by the petitioner Corporation. The labour court has also considered that after termination of the respondent workman, another employee has been recruited in place of the respondent workman by the petitioner Corporation. However, the respondent workman has admitted that duration of the select list for two years expired on 4th September, 1993. The labour court has considered the pay slips at Exh.11 wherefrom it reflected that the workman remained in service upto August, 1993 and thereafter on 19th August, 1993 his services came to be terminated. The labour court has come to the conclusion that the list had expired on 9th April, 19 93 at that time, vacancy was available in the petitioner Corporation and some eighteen workmen have been appointed on permanent basis on the post in question but inspite of this fact, though the respondent workman was continued upto 18th August, 1993 and without considering the documents at Exh.11 to 17, services of the workman came to be terminated illegally. Therefore, the labour court has come to the conclusion that termination of respondent workman is not justified by the petitioner Corporation. The labour court has further observed that on what basis services of the respondent workman came to be terminated, has not been justified by the corporation and no reasons given by the petitioner Corporation before the labour court and hence, there was no justification on the part of the corporation before the labour court by producing any documentary evidence as well as oral evidence before the labour court. The labour court has also considered that working days of the respondent workman and services of the

respondent workman terminated without compliance of any provision of Industrial Disputes Act, 1947. Therefore, considering all these aspects, when the respondent workman has deposed before the labour court that he remained unemployed during the interim period and when no rebuttal evidence has been produced by the petitioner Corporation, the labour court has granted full backwages of the interim period. After perusing the award passed by the labour court, according to my opinion, the award passed by the labour court so far it relates to grant of reinstatement with continuity of service to the respondent workman requires to be upheld on the ground that the respondent workman has deposed before the labour court that he had continuously worked with the petitioner Corporation for three years and since this evidence of workman remained unchallenged in absence of rebutting documentary and / or oral evidence. It is also observed that the view taken by the labour court is just and proper in view of recent decision given by the Apex Court in case of M/S TANNERY & FOOTWEAR CORPORATION OF INDIA V. RAJ KUMAR reported in 2002 AIR SCW pg.44. The relevant observations in para-3 are referred as under :-

"3. Learned counsel for the appellant submitted that the burden of proof lay upon the respondent to establish that he was in the employment of the appellant and had worked for a period of 240 days in a year before termination of his services and no such material was made available. It is clear that neither the respondent produced any material in support of his case, nor to rebut the claim made by him any material was produced by the appellant. It is in these circumstances that the labour court came to the conclusion that on appreciation of the material on record such as Exh.E-1 [ Appointment letter ] and Exh.E-4 [ the order of termination that the respondent are not required from 20-7-1976 ] that the respondent had worked with the appellant for 240 days in a year. If that was the material on which the labour court placed reliance as no other material was placed by the appellant in rebuttal of the same, we think that the view taken by the labour court is in order. Therefore, the High Cout was justified in not interfering with the award made by the Labour Court."

It is also necessary to note that for termination, whether the workman has completed 240 days or not, is much relevant but if the termination order is

challenged by the workman, the same is required to be justified by the employer and on such occasion it is not necessary to consider whether the workman has completed 240 days or not. Irrespective of completion of 240 days continuously, it is burden on the employer to justify the termination order under challenge. At the time of terminating the respondent workman, no reasons has been given by the petitioner Corporation for termination. Not only that but there arrived no justification from the petitioner Corporation before the Labour Court. Before the labour court, the petitioner Corporation remained si lent except filing of a reply but as such, no documentary or oral evidence led by the petitioner Corporation to rebut the evidence of the respondent workman. Therefore, once the termination is not justified and termination order remained without any justification, then the labour court is certainly justified in setting aside said termination order which amounts to colorable exercise of powers by the authority concerned. Therefore, direction which has been issued by the labour court so far it relates to setting aside the termination order and granting reinstatement with continuity of service, in view of this Court, the labour court has not committed any error which in no way calls for any interference of this Court while exercising the powers under Article 226 and 227 of the Constitution.

If the directions issued by the labour court granting full backwages to the respondent workman of the interim period from 19th August, 1983 to 28th January, 1999 is considered, according to my opinion, the labour court has committed error in grant full backwages of the interim period. The reason is that respondent workman was working as Off Day Reliever Watchman and not as permanent Watchman. The workman was, no doubt, selected but not appointed on the post in question. The workman remained continued in service for a period of three years and dispute was raised which referred for adjudication on 15th March, 1994. The Reference remained pending for adjudication before the labour court for five years on account of no fault on either side and thus , considering all these aspects as well as the fact the petitioner Corporation being public body, so also, a presumption that the workman might not have remained unemployed completely during the interim period as he has maintained his family , according to my opinion, though there was no rebuttal evidence against gainful employment proved by the petitioner Corporation and the fact that respondent workman remained in service for a period of three years, in such situation grant of full backwages of the interim period can be said to be over burden on the public body .

Therefore, according to my opinion, relief granted by the labour court awarding full backwages is erroneous, requires to be interfered with by this Court.

In the result, present petition is partly allowed. The award passed by the labour court, Himatnagar in Reference No.525 / 1996 dated 28th January, 1999 is modified to the effect that directions issued by the labour court granting full backwages of interim period is hereby quashed and set aside. However, award granting reinstatement with continuity of service is not disturbed by this Court and the same is confirmed by this Court.

Learned advocate Mr.Biren Vaishnav for respondent workman now submits that in pursuance of the order dated 22nd March, 2000 passed by this Court, the respondent workman has been reinstated in service but the workman has not been paid the full wages the petitioner Corporation from the date of award till his reinstatement and therefore, some suitable directions may be issued on petitioner Corporation. Considering request made on behalf of the respondent, it is directed to the petitioner Corporation to pay full wages to the respondent workman with effect from 28th January, 1999 upto his actual reinstatement in service within period of two months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated hereinabove. No order as to costs. Direct Service is permitted to the respondent.

Date : 12-4-2002 [ H.K.RATHOD, J.]

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